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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1744

WILLIE R. BARNES, as Commissioner of
Corporations of the State of California,
Petitioner,

vs.

HEWLETT-PACKARD COMPANY, a California
corporation, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit

**BRIEF OF RESPONDENTS JOHN SCALONE AND FREDDY SAN-
CHEZ AS TRUSTEES OF THE JOINT BENEFIT TRUST ES-
TABLISHED BY CALIFORNIA PROCESSORS, INC., AND THE
CALIFORNIA STATE COUNCIL OF CANNERY AND FOOD
PROCESSING UNIONS, IN OPPOSITION**

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California State Council of Cannery and Food
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Respondents John Scalone and Freddy Sanchez, as Trustees of the Joint Benefit Trust established by California Processors, Inc., and the California State Council of Cannery and Food Processing Unions, op-

poses the Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.¹

Pursuant to Rule 40(3) of the Supreme Court, respondent adopts the statements of petitioner on Opinions Below, Jurisdiction, Constitutional and Statutory Provisions Involved and Statement Pursuant to Rule 33(2)(b).

QUESTIONS PRESENTED

Respondent adopts the statement of Questions Presented set forth in the Brief of Wells Fargo and Company in Opposition on file herein as restated below:

1. Whether the Court of Appeals correctly held that the federal Employee Retirement Income Security Act of 1974 (ERISA) preempts regulation of employee welfare benefit plans by the California Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene).

2. Whether the Court of Appeals correctly held that in the context of this case, the preemption provisions of ERISA do not offend the McCarran-Ferguson Act.

¹Other respondents in this proceeding are Hewlett-Packard Company, a California corporation, Standard Oil Company of California, a Delaware corporation, The Pacific Lumber Company, a Maine corporation, The Pacific Lumber Company Employee Benefit Organization, a nonprofit Delaware corporation, Wells Fargo & Company, a California corporation, and the Southern California Drug Benefit Fund.

3. Whether the Court of Appeals correctly held that enactment of ERISA is a valid exercise of Congressional power under the commerce clause, Article 1, section 8, clause 3 of the United States Constitution.

4. Whether the Court of Appeals correctly held that preemption by ERISA of a state law which regulates private activity does not violate the Tenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

With regard to the above Questions Presented, respondent maintains that: (1) the State of California is preempted from regulating respondent, a self-funded employee welfare benefit plan within the meaning of ERISA; (2) ERISA preemption of Knox-Keene does not offend state power to regulate insurance under the McCarran-Ferguson Act; (3) the enactment of ERISA was a valid exercise of commerce clause power granted under the United States Constitution; and (4) the enactment of ERISA did not violate the Tenth Amendment. It is further respondent's position that the instant case does not present an important or novel question of federal law, or a lower court decision in conflict with prior decisions of this Court, which would in any way justify the granting of certiorari in this case.

ARGUMENT

1. NO IMPORTANT QUESTION OF FEDERAL LAW HAS BEEN PRESENTED BY THIS CASE WHICH SHOULD BE SETTLED BY THIS COURT.

A. The decision of the Court of Appeals has not resulted in the preemption of a state law vitally important to the health and welfare of citizens of the State of California.

Throughout this litigation petitioner has premised its arguments upon the improper and inaccurate assertion that Knox-Keene is vital to the people of California. This assertion in turn rests upon a mere explanation of the differences between Knox-Keene and ERISA, and the fact that Knox-Keene imposes more burdensome requirements than does ERISA. In formulating ERISA, however, Congress determined that the Knox-Keene type of approach was not vital, or even desirable. Second-guessing the Congress with regard to that substantive policy determination is not the proper business of courts nor a legitimate subject for litigation. The fact that the petitioner disagrees with the Congressional conclusion that its statutory scheme provided adequate protection for employee welfare benefit plan participants is of no consequence and does not imbue this litigation with important questions justifying consideration by this Court.

The fact that no other similar state statutes have been cited by petitioner is of significance. Knox-Keene is, in essence, a miniature ERISA brought into being after ERISA's effective date by a state legislature noted for its prolific enactments. Knox-Keene is virtually unique among the statutes of the various states and this litigation does not, therefore, present questions of national significance.

B. The decision of the Court of Appeals is not based upon a misconstruction of the preemption provisions of ERISA.

The petitioner relies upon Section 514(b)(2)(A) of ERISA for the proposition that Knox-Keene is not preempted by ERISA. That section reads:

"Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities."

29 U.S.C. §1144(b)(2)(A)

Even if one were to assume that Knox-Keene is a state law which regulates insurance, the very wording of the above-quoted ERISA provision disposes of any question.

The thrust of that section is, that as provided in subparagraph (B), this subchapter of ERISA shall be construed to exempt persons from state laws which regulate insurance, banking or securities. Subparagraph (B) makes it absolutely clear that employee benefit plans (as defined in ERISA) are to be relieved of state insurance, banking, or securities regulation.

The lower courts in this case clearly recognized this, and in so finding are consistent with the holdings of other federal, district, and circuit courts with regard to closely related matters. This can be seen by reference to the cases cited by petitioner on pages 11 and 12 of its petition which dealt with state insurance laws only indirectly affecting ERISA-covered employee welfare benefit plans.

There is, therefore, no conflict among the circuit courts which would compel, or even justify, a grant of certiorari in this case. Indeed, there is no indication whatsoever that the circuit courts are not properly elaborating the provisions of ERISA without imposing that extensive burden upon the Supreme Court. There is no requirement that the Supreme Court construe every federal law, as the petitioner implies on page 12 of its petition.

C. The decision of the Court of Appeals does not impair the McCarran-Ferguson Act or the power of states to regulate insurance.

Section 1012 of the McCarran-Ferguson Act states in pertinent part:

“(b) No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance. . . .”

McCarran-Ferguson Act, 59 Stat. 33, 34, as amended, 15 U.S.C. (Supp. V) §1012.

It is clear from the above-quoted provision that even under the McCarran-Ferguson Act, Congress retained its full power to legislate with regard to insurance, either completely, or to any lesser extent desired. The above-quoted provision simply assures that Congressional intervention into the field of insurance regulation will not occur by accident as a result of unwarranted statutory construction. Nevertheless, Congress has retained the full power to specifically refer to insurance and thus to legislate regarding it, even if only to a limited extent.

This is precisely what was done in Section 514 of ERISA. Petitioner's implication that Congress may act regarding insurance only by passing a major piece of legislation primarily concerned with insurance regulation finds no basis in the McCarran-Ferguson Act.

2. **THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH PRIOR DECISIONS OF THIS COURT CONSTRUING THE SCOPE OF CONGRESS' POWER UNDER THE COMMERCE CLAUSE.**

The petitioner has utilized the commerce clause “reasonable means to a permitted end” test to once again attempt to second-guess Congress' conclusion that the ERISA scheme provided adequate protection for employee welfare benefit plan participants. It is apparent that the petitioner has transformed what was intended under that test to be merely a threshold question into a full-blown reevaluation of the substantive policy decisions embodied in ERISA's structure. As indicated above, this is totally inappropriate.

No evidence has ever been presented in connection with this litigation which would justify a finding that ERISA is not a reasonable means for achieving what is universally admitted to be a permitted end. The petitioner simply desires a different reasonable means, that which his legislature embodied in Knox-Keene. But if the means is reasonable, then the Congressional action is constitutional and no further inquiry is necessary.

3. THE DECISION OF THE COURT OF APPEALS DOES NOT INVOLVE AN IMPORTANT AND NOVEL CONSTITUTIONAL QUESTION REGARDING THE LIMITATIONS IMPOSED ON CONGRESS BY THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The petitioner's argument regarding the Tenth Amendment is identical to its commerce clause argument, and equally faulty. The mere fact that Knox-Keene and ERISA differ does not render ERISA an unconstitutionally unreasonable means to a permitted end. Petitioner relied upon authority, *National League of Cities v. Usery*, 426 U.S. 833 (1976), which dealt with attempted federal regulation of state governmental employees, is wholly distinguishable from the instant case which presents questions concerning only private sector employees.

CONCLUSION

For the reasons set forth above, and in the briefs in opposition submitted by the other respondents herein, the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit should not be granted.

Dated, July 31, 1978

Respectfully submitted,

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